IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

OP.No. 33384 of 2002(Y)

PETITIONER:

BIJU RAMESH, S/O.G.RAMESAN,
"SUMTHRIPTHI", RAJADHANI BUILDINGS,
EAST FORT, THIRUVANANTHAPURAM, PIN - 695 023.

BY ADV. SRI.P.N.RAVINDRAN

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE SUB COLLECTOR/REVENUE DIVISIONAL OFFICER, THIRUVANANTHAPURAM.**

3. **THE TAHSILDAR, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/01/2007, THE COURT ON THE SAME DAYDELIVERED THE FOLLOWING:

ORDER ON CMP. NO.56384/2002 IN OP. NO.33384/2002

DISMISSED

16.01.2007 **SD/- K.BALAKRISHNAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE REPRESENTATION DT.22.6.01 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P2:- COPY OF THE NOTICE D.T.20.10.01 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT

EXT.P3:- COPY OF THE LETTER DT.21.11.01 SENT BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P4:- COPY OF THE PROCEEDINGS DT.13.12.01 ISSUED BY THE 3RD RESPONDENT.

EXT.P5:- COPY OF THE DEMAND NOTICE DT. NIL ISSUED BY THE 3RD RESPONDENT ALONG WITH EXT.P4.

EXT.P6:- COPY OF THE RECEIPT DT.10.1.02 ISSUED TO THE PETITIONER FROM VILLAGE OFFICE , PETTAH.

EXT.P7:- COPY OF THE APPEAL DT. 9.1.02 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE ORDER DT.7.8.02 ISSUED BY THE 2ND RESPONDENT.

/TRUE COPY/

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K.BALAKRISHNAN NAIR, J.

O.P.NO.33384 of 2002-Y

Dated this the 16th day of January, 2007

JUDGMENT

The petitioner is the owner of a hotel in Thiruvananthapuram bearing Door No.T.C.36/176 (2) of Thiruvananthapuram Corporation. He is aggrieved by the assessment of building tax for the building housing the hotel. The petitioner purchased the building in 1999. The erstwhile owner was assessed to tax by order dated 27-5-1999. The assessment was made on the footing that the plinth area of the building is 525.31 sq. metres and the building tax demanded was Rs.87,750/-. The erstwhile owner paid the said amount. Under the directions of the Commissioner for Land Revenue the building was inspected and it was found that there was additional improvement made to the building which enhanced the plinth area to 716 sq. metres. On the basis of the said finding, Ext.P4 assessment order dated 13-12-2001 was passed demanding Rs.1,30,500/-. After giving credit to the amount already paid the petitioner was directed to pay Rs.42,750/-. Feeling aggrieved by the said order the petitioner preferred Ext.P7 appeal before the

Sub Collector. Mainly two grounds were raised before the appellate authority. The first ground was that the structures treated as additionally added were already there. Having regard to the nature of those structures they were exempted at the time of first assessment. The second contention was that those structures which were added to the existing plinth area do not come under the definition of building and therefore they should have been exempted. The District Collector dismissed the appeal by Ext.P8. The said officer only considered the second contention as evident from the appellate order. This original petition is filed challenging Exts.P4 and P8. According to the petitioner, the canopy and the structure made on the roof of the building d using pillars and steel sheets were always there. No additional construction was made. Further, they should not be treated as building for the purpose of the Act.

2. The respondents 1 to 3 claimed they have filed counter affidavit. May be because of some defect it was not part of record. A copy of which was handed over to me. According to the counter, the construction was made using pillars and therefore it is a permanent structure as Sec.2 (e) of the Building Tax Act. Further, they re-iterated the contention that those structures were constructed after.....

3. The contention of the petitioner that structures erected with pillars and steel frames should not be treated as building cannot be accepted. The definition of building in Section 2 (e) reads as follows:

> **Sec.2(e): "**Building means a house, out-house, garage, or any other structure, or part thereof, whether of masonry bricks, wood, metal or other material, but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure."

Going by the said definition, structures with pillars and steel frames is building. Whether the structures were there in 1999 or were constructed only subsequently is a disputed question of fact which cannot be resolved in this proceedings. Even assuming that those structures were there, Ext.P4 order can be treated as an order under Section 59 rectifying mistakes. Therefore, no prejudice is caused even if the structures already there at the time of first assessment.

In the result, the Original Petition fails, and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE.

MS

K.BALAKRISHNAN NAIR, J.

O.P. No.33384 of 2002-Y

J U D G M E N T

DATED 16th JANUARY,2007